

REMARKS

Entry of the foregoing and further and favorable reconsideration of the subject application in light of the foregoing amendment and the following remarks:

Applicant respectfully submits that no new matter has been added.

Claims 1-10, 13 and 14 are currently pending, claims 11 and 12 having been withdrawn from consideration pursuant to the Examiner's Restriction requirement under 35 U.S.C. 121 for a single disclosed species for prosecution on the merits.

Drawings

The Examiner has issued an Objection to the Drawings because there is no brief description of Figure 3C in the specification, requiring corrected drawing sheets under 37 CFR 1.121(d).

In complete response, the Applicant respectfully submits that the following amendment to the specification was included together with the May 22, 2006 Amendment in Response to the March 22, 2006 Office Action, which recited:

IN THE SPECIFICATION:

Please amend claims under the provisions of 37 C.F.R. § 1.121(b) by deleting the bracketed word or words and inserting the underlined word or words as follows:

On page 3, line 13, after "closure." please insert, FIGURE 3C. Anchor means of the present invention.

Applicant has resubmitted the above together with an additional Replacement Sheet pursuant to 37 CFR 1.121(d) in order to ensure a complete response herewith. Accordingly, Applicant respectfully urges the Examiner to withdraw the Objection as the Drawings are in compliance with the requirement. Support for the amendment may be found generally throughout the application and specifically, *inter alia*, in the Specification as filed at page 5, lines 20 through page 6 line 3. No new matter has been added.

35 USC § 102.

Henry (US 5241784)

On page 3 of the Office Action, the Examiner rejects Claims 1, and 6-10 under 35 USC 102(b) as anticipated by Henry (US 5241784).

The Examiner asserts that for Claims 1,9 and 10, Henry discloses a protection device comprising: "a continuous plastic tubular substantially non-rigid sheet liner with closed bottom end and open top end and a plurality of apertures wherein the apertures are positioned in an alternating anti-parallel orientation." The Examiner particular directs attention to Figure 6 of the Henry disclosure, noting that the apertures are capable of preventing passage of vermin and permitting passage of water.

In response, the Applicant respectfully submits that the disclosure of Henry is entirely distinct from the instant invention.

Henry claims:

A container for enclosing the roots and root tips of a plant intended to be transplanted and growing medium comprising:

a sidewall formed from a sheet of material having opposite top and lower edges and side edges that extend generally vertically when said container is in use and

said sheet of material having a corrugated shape including undulations extending from one side edge to the opposite side edge, said sidewall having an outer and an inner surface, each said undulation including a trough and an apex extending from said top to said lower edge, the inner surface of a said side edge of said sidewall overlapping the out surface of the opposite side edge to form a cylinder attached by a connecting means for affixing said side edges, the lower edge of said sidewall being the perimeter of the bottom of said container;

a plurality of air root pruning means located in said sidewall for pruning root tips, whereby said container inhibits the tendency of spiral root growth by leading root tips to the said air root pruning means and encouraging additional root branching, said pruning means comprising apertures in said sidewall, said apertures being located at said apexes of the undulations in said sidewall when viewed from the exterior of said container.

It is respectfully submitted that Henry does not disclose the continuous plastic tubular substantially non-rigid sheet liner of the instant invention.

Indeed, Henry discloses a non-continuous single layer, corrugated sheet of material, which must be folded back on itself and fastened together by overlapping the edges, connecting them together by a connecting means in order to form a cylinder. Indeed, Henry further teaches at Claim 7 "holes spaced along each vertical edge of said sidewall for allowing fastening member to pass through and connect said vertical overlapping edges to form said cylindrical shape." Still further, Henry's container provides that "the lower edge of said sidewall being the perimeter of the bottom of said container." Thus, Henry's sheet necessarily must be bent into a cylinder shape, with overlapping edges that must be fastened to each other. Henry's folded sheet, is not only non-contiguous, but lacks a contiguous bottom as well. Indeed, the bottom is only provided as a separate element as described at 40 and Claim 6.

Applicant respectfully submits that Henry does not disclose "a continuous plastic tubular substantially non-rigid sheet liner with closed bottom end and open top end." Applicant has

hereinabove amended Claim 1 of the instant invention to reference the continuous tubular sheet as a “continuous and contiguous tubular sheet ...”

Directing Applicant’s attention to Figure 6, the Examiner asserts at page 3, that Henry discloses rows of diagonally shaped apertures.

Applicant respectfully submits that Henry at Figure 6 discloses a single, non-contiguous “sheet of material having a corrugated shape including undulations extending from one side edge to the opposite side edge,” wherein apertures are positioned at the apex of the undulation. Accordingly, if the non-contiguous corrugated sheet is laid flat, it is apparent that the apertures are not diagonal, but restricted to horizontal or vertical orientation. Indeed, at Column 4, Henry specifies aperture configurations as “horizontal and vertically oriented” in referencing Figure 6.

Accordingly, Applicant respectfully submits that the application as amended is therefore not anticipated by Henry et al and urges the Examiner to withdraw the rejection of Claims 1, and 6-10 under 35 USC 102(b) as anticipated by Henry (US 5241784).

Takita (US 5564223)

On page 4 of the Office Action, the Examiner rejects Claims 1, 2,4 and 5 under 35 USC 102(b) as anticipated by Takita (US 5564223).

The Examiner asserts that for Claim 1, Takita discloses a protection device comprising: “a continuous plastic tubular substantially non-rigid sheet liner with closed bottom end and open top end and a plurality of apertures wherein the apertures are positioned in an alternating anti-parallel orientation.” The Examiner particular directs attention to Figure 1A and 10 of the Takita disclosure, noting that Takita discloses a closure means as a tie.

In response, the Applicant respectfully submits that the disclosure of Takita is entirely distinct from the instant invention.

Takita provides:

A quick-peelable wrap for enveloping and thus protecting fruit on a plant, said wrap comprising;

a wrap bag having a closed end and an open end and longitudinal sides that extend between said closed end and said open end, said wrap bag being formed from a material that defines a plurality of pores that extend through said bag;

a pair of inwardly directed folds formed in said bag, each said fold extending inward from one said side of said bag toward said other side of said bag wherein said folds are formed to at least partially overlap each other;

a notch defined by said bag adjacent said open end thereof, said notch being defined by a pair of spaced apart strips that extend along said sides of said bag, said strips being connectable together to span over a plant branch; and

a separation assembly extending through said bag body from said bag closed end to said notch to facilitate separation of said bag into two sections.

Applicant respectfully submits that Takita discloses a porous foam, quick peelable fruit protective wrap. There is nothing in Takita to suggest the antiparallel orientation of the apertures disclosed by the instant invention, let alone any regularity or importance in the positioning of Takita's pores. Indeed, Takita describes the formation of the pores as a result of the extrusion process of forming the foam. Moreover, Takita is specific in describing (and claiming) required essential overlapping folds and essential notches (defined by a pair of spaced apart strips that extend along said sides of said bag) formed in the extrusion process, entirely distinct – and teaching away—from the present invention.

Accordingly, Applicant respectfully submits that the application as amended is therefore not anticipated by Takita and urges the Examiner to withdraw the rejection of Claims 1,2,4, and 5 under 35 USC 102(b) as anticipated by Takita (US 5564223).

35 USC § 103.

The Examiner has rejected Claim 3 under 35 USC 103(a) as unpatentable over Henry et al (US5241784) in view of Beers (US1464801) and rejects claims 13 and 14 as unpatentable over Henry et al (US5241784) in view of Anderson (US 4628634).

In response, Applicant has herein above amended Claim 1 of the instant application to reflect the contiguous nature of the sheet, which in addition to arguments made hereinabove, renders the invention distinct from the disclosure of Henry et al (US5241784). Accordingly, Applicant respectfully submits that the application as amended is therefore not unpatentable over Henry et al in view of Beers or Anderson and therefore urges the Examiner to withdraw the rejection of Claims 3, 13 and 14.

Prior art references in combination do not make an invention obvious unless something in the prior art references would suggest the advantage to be derived from combining their teachings. The suggestion to combine the references should not come from applicant. Orthopedic Equipment Co. v. United States, 217 U.S.P.Q. 193, 199 (CAFC 1983); Uniroyal, Inc. v. Rudkin-Wiley Corp., 5 U.S.P.Q. 2d 1434 (C.A.F.C. 1988) ("where prior-art references require selective combination by the court to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight gleaned from the invention itself...Something in the prior art must suggest the desirability and thus the obviousness of making the combination.").

Applicant respectfully submits that the prior art does not suggest the combination disclosed by the present invention.

CONCLUSION

For the foregoing reasons, Applicant respectfully submits that the application and amended claims are now in proper form for allowance and that the amended claims are patentable over the prior art. Therefore, Applicant respectfully submits that the application is now in condition for allowance, and solicits favorable action on all pending claims, namely Claims 1-10, 13 and 14.

If for any reason this application is not believed to be in full condition for allowance, applicant respectfully requests the constructive assistance and suggestions of the Examiner pursuant to M.P.E.P. 706.03(d) and 707.07(j) in order that the undersigned can place this application in allowable condition as soon as possible and without the need for further proceedings. In the event that there are any questions concerning this Amendment, or the application in general, the Examiner is respectfully urged to telephone the undersigned so that prosecution of the application may be expedited.

Respectfully submitted,
STEIN & STEIN

By: _____

Steven B. Stein
Reg. No.: 43,159

12/13/2006

STEIN & STEIN
114 Old Bloomfield Ave.
Parsippany, NJ 07054
(973) 882-8820
Date: December 13, 2006